(b)(6); (b)(7(C)

July 18, 2013

Dr. Michael Plater, Ph. D.
President
Strayer University
1133 15th Street, NW
Washington, DC 20005-2603

UPS Tracking Number
1ZA5467Y0193838095

RE: **Final Program Review Determination**
OPE ID: 00145900
PRCN: 201040327290

Dear President Plater:

The U.S. Department of Education's (Department's) School Participation Team - Philadelphia issued a program review report on March 25, 2011 covering Strayer University's (SU) administration of programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs), for the 2008-2009 and 2009-2010. SU's final response was received on April 27, 2012. A copy of the program review report (and related attachments) and SU's responses are attached. Any supporting documentation submitted with the responses is being retained by the Department and is available for inspection by SU upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to close the review.

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. §§ 668.24(e)(1), (e)(2), and (e)(3).

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Diane Sarsfield at 215.656.6459.

Sincerely,

(b)(6); (b)(7(C)

Nancy P. Gifford
Division Director

Enclosures: Final Program Review Determination
Program Review Report issued on March 25, 2011
SU's Responses to the Program Review Report

cc: Mr. Cale Holman, Director, Student Finance Operations
Middle States – Higher Education
DC Education Licensure Commission

Prepared for

Strayer University

OPE ID: 00145900
PRCN: 201040327290

Prepared by:
U.S. Department of Education
Federal Student Aid
School Participation Division - Philadelphia

Final Program Review Determination
July 18, 2013

Federal Student Aid, Philadelphia School Participation Division
100 Penn Square East, Suite 511
Philadelphia, PA 19107
www.FederalStudentAid.ed.gov

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A. Institutional Information

A. **Institutional Information**

Strayer University
1133 15th Street, NW
Washington, DC 20005-2603

Type: Proprietary

Highest Level of Offering: Graduate/Professional

Accrediting Agency: Middle States Commission on Higher Education

As of Spring 2010 Quarter:
Student Enrollment: 55,971
% of Students Receiving Title IV: 73.2%

Title IV Participation 2009-2010 *(per PCNet):*

William D. Ford Federal Direct Loan (Direct Loan) Program	$ 106,964,059.00
Federal Family Education Loan (FFEL) Program	$ 571,080,375.00
Federal Pell Grant Program	$ 102,434,073.00
Federal SEOG Program	$ 3,356,204.00
Federal SMART Grant Program	$ 1,307,953.00

Default Rate FFEL/DL: 2009 10.0%
2008: 6.7%
2007: 6.0%
2006: 3.8%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Strayer University (SU) from August 30, 2010 to September 3, 2010. The review was conducted by Ms. Dorothy Davidson, Mr. Joseph Kern and Ms. Diane Sarsfield.

The focus of the review was to determine SU's compliance with the statutes and regulations as they pertain to the institution's administration of the Title IV, HEA programs. The review consisted of, but was not limited to, an examination of SU's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 30 files was identified for review from the 2008-2009 and 2009-2010 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. Appendix A of the program review report, lists the names and partial social security numbers of the students whose files were examined during the program review. A program review report was issued on March 25, 2011.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning SU's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve SU of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

C. Findings and Final Determinations

The program review report finding(s) requiring further action are summarized below. At the conclusion of each finding is a summary of the University's response to the finding, and the Department's final determination for that finding. A copy of the program review report issued on March 25, 2011 is attached as Appendix A.

Finding # 1: Title IV Funds Disbursed to Students in an Ineligible Program

Citation Summary:

A student is eligible to receive Title IV assistance if the student is a regular student enrolled in an eligible program at an eligible location. 34 C.F.R. § 668.32(a)(1)(i). At a proprietary institution of higher education, an eligible program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation. 34 C.F.R. § 668.8(d)(iii).

Noncompliance Summary:

Strayer University disbursed Title IV funds to students enrolled in the Associate in Arts in General Studies (AAGS). The Department initially determined that this program did not meet the Title IV definition of an eligible program. An associate degree in General Studies does not prepare students for employment in a recognized occupation.

Required Action Summary:

SU was required to ensure its educational offerings meet the definition of an eligible program prior to disbursing additional Title IV funds to students. As a result of the program review, SU was required to conduct a file review to identify Title IV funds disbursed to students enrolled in AAGS program from July 1, 2006 through the present. The University was required to submit the results of that file review in a spreadsheet and summarize the total amount of ineligible Title IV funds disbursed that remain to be paid by program and award year.

SU's Response:

In its responses submitted on May 16, 2011 and April 27, 2012, SU provided additional documentation and information regarding the AAGS program. In addition, SU notified the Department that it discontinued new enrollment in the program in May 2011 and completed the program for students already enrolled without disbursing any additional Title IV funds.

Final Determination:

The Department reviewed the additional documentation and information provided by SU regarding the AASG program. The Department determined that the additional information and documentation resolves the finding for the award years identified in the program review report and all prior award years.

If SU chooses to reinstate this type of program in the future, it must ensure that all Title IV requirements including those identified above requiring a program to lead to gainful employment in a recognized occupation are met. To avoid any issues in the future, SU should provide information regarding the program to the Department prior to enrolling students to ensure that all requirements are met.

Finding #2: Excess Cash Maintained

Citation Summary:

Excess cash is considered to be any amount of Title IV program funds that an institution does not disburse to students or parents by the end of the third business day following the date the institution received those funds from the Secretary. 34 C.F.R. § 668.166. Cash management regulations state that an institution has disbursed Title IV funds on the date that the institution credits a student's account at the institution. 34 C.F.R. § 668.164.

Noncompliance Summary:

Strayer University failed to disburse all Title IV funds drawn through the G5 System within the required three-day timeframe. The program review report cited six drawdowns in violation of the regulatory timeframe.

Required Action Summary:

SU was required to review its policies and procedures in order to ensure that all Title IV funds received by the institution are promptly disbursed to the intended student within the required timeframe. The institution was required to submit a copy of any policy changes with its response to the program review report.

SU's Response:

In its response submitted May 16, 2011, SU concurred with the Department's findings as to four of the excess cash amounts. SU disagreed with three of the excess cash findings and provided documentation to show these disbursements fell within the excess cash tolerances provided at 34 C.F.R. § 668.166(b).

In addition, SU submitted a revised disbursement procedure to ensure funds are posted within the required timeframe.

Final Determination:

Finding #2 of the program review report cited SU for failure to disburse Title IV funds received by the institution to the intended student within the required timeframe. SU concurred with the Department's findings as to four of the excess cash amounts. SU disagreed with three excess cash findings. The Department reviewed SU's position for the three findings and concurs that the excess cash amounts fell within the 7 day tolerance cited in the regulations.

SU must follow its revised procedures to ensure compliance with the excess cash requirements.

Finding #3: Title IV Funds Not Disbursed Timely During Payment Period

Citation Summary:

Federal regulations require that a student is eligible to receive Title IV funds if the student meets all of the eligibility criteria. Participating institutions are required to make these eligibility determinations. If all eligibility requirements are met, the institution should pay any student who is eligible and make payments for all eligible periods of enrollment. 34 C.F.R. § 668.32. The Cash Management Regulations specify that a school must disburse all FSA grant and loan funds on a payment period basis. Furthermore, the regulations require an institution to disburse Title IV funds at least once each payment period. 34 C.F.R. § 668.164(b). The disbursements should be completed to best meet the needs of students at the school. 34 C.F.R. § 690.76(a).

Noncompliance Summary:

Strayer University did not disburse Title IV funds timely to students each payment period. The review team found that several of the Pell Grant drawdowns selected for review included disbursements to students' accounts for prior payment periods. Consequently, the timing of these disbursements resulted in Title IV funds not being available to help students meet their financial responsibilities during the payment period.

Required Action Summary:

SU is required to maintain a cash management system to comply with the disbursement requirements and federal regulations. Additionally, SU was required to develop procedures for disbursing Title IV funds on a timely basis each payment period to help students meet their financial needs during that period.

SU's Response:

In its response submitted on May 16, 2011, SU disagreed with the Department's finding. SU asserted that its policy is to disburse Title IV funds that students are eligible to receive once during the term for which the student is enrolled. SU indicated that during an internal audit, it identified a group of students that had received a lower Pell grant than they were entitled to receive. SU corrected the under awards by disbursing the balance of the Pell Grant funds owed to the students.

Final Determination:

Finding #3 of the program review report cited SU for failing to disburse Title IV funds timely during each payment period.

In its response, the institution disagreed with the Department's finding. The Department concurs with SU's assertion that the disbursements were made to correct Pell awards previously disbursed to students. However, the Department is concerned with the lateness of some of the disbursements. In some cases, the Department noted that the additional Title IV funds were disbursed to students after the completion of a prior payment period or disenrollment at the school. In these instances, students were deprived of funds to meet the direct and indirect costs during their attendance at the school.

SU must strengthen its procedures to ensure that Title IV funds are disbursed timely in order that Title IV funds are available to help students meet expenses during their attendance at school.

Final Program Review Determination
PRCN #: 201040327290

Appendix A

Program Review Report
March 25, 2011

START HERE
GO FURTHER
FEDERAL STUDENT AID

Prepared for:
Strayer University

OPE ID 00145900
PRCN 201040327290

Prepared by:
U.S. Department of Education
Federal Student Aid
School Participation Team - Philadelphia

Program Review Report
March 25, 2011

Federal Student Aid, School Participation Team - Philadelphia
100 Penn Square East Suite 511
Philadelphia, PA 19107
www.FederalStudentAid.ed.gov

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A. Institutional Information

Strayer University
1133 15th Street, NW
Washington, DC 20005-2603

Type: Proprietary

Highest Level of Offering: Graduate/Professional

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2007: 6.0%
2006: 3.8%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Strayer University (SU) from August 30, 2010 through September 3, 2010. The review was conducted by Ms. Dorothy Davidson, Mr. Joe Kern and, Ms. Diane Sarsfield.

The focus of the review was to determine SU's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). The review consisted of, but was not limited to, an examination of SU's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 30 files was identified for review from the 2008-2009 and 2009-2010 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. Appendix A lists the names and social security numbers of the students whose files were examined during the program review.

Furthermore, the program review included an examination of the distance education programs offered by Strayer University. The review team selected three educational programs with a distance education component: Master of Education - Educational Management; Bachelor of Science – Accounting; and, Undergraduate Certificate - Information Systems. From the courses offered for the three programs, six courses were selected for a detailed review. The selected courses represented different subject matters, course levels and course types. The courses were delivered during the 2008-2009 and 2009-2010 award years.

In addition, twenty students were selected from each course and surveyed by email and telephone. And, one section, for each course reviewed, was selected to examine the course evaluations and to survey the faculty members who taught the course.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning SU's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve SU of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

This report reflects initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Review Determination letter.

C. Findings

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by Strayer University to bring operations of the financial aid programs into compliance with the statutes and regulations.

Finding # 1: Title IV Funds Disbursed to Students in an Ineligible Program

Citation: A student is eligible to receive Title IV assistance if the student is a regular student enrolled in an eligible program at an eligible location. *34 C.F.R. § 668.32(a)(1)(i).*

An institution's Title IV eligibility does not necessarily extend to all of its programs. The institution is responsible for determining if its programs meet the definition of an eligible program. At a proprietary institution of higher education, an eligible program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation. *34 C.F.R. § 668.8(d)(iii).*

Noncompliance: Strayer University disbursed Title IV funds to students enrolled in the Associate in Arts in General Studies (AAGS). This program does not meet the Title IV definition of an eligible program. As stated above, an associate degree offered at a proprietary institution is eligible under the Title IV programs if the degree provides training that prepares students for gainful employment in a recognized occupation. An associate degree in General Studies does not prepare students for employment in a recognized occupation. Therefore, Strayer University's Associate in Arts in General Studies program does not meet the definition of an eligible program for Title IV purposes.

Strayer University's failure to ensure that Title IV funds were only disbursed to students enrolled in an eligible program has caused increased expense for the Department.

Required Action: Strayer University must immediately ensure that its educational offerings meet the definition of an eligible program prior to disbursing additional Title IV funds to students. As a result of our review, Strayer University must conduct a file review to identify Title IV funds disbursed to students enrolled in Associate in Arts in General Studies from July 1, 2006 through the present. SU must submit the results of that file review in a spreadsheet, in the format indicated below. The institution must provide the spreadsheet in both hardcopy and electronic formats. The spreadsheet should include the following information.

1. Student Name;
2. Social Security Number;
3. Dates of Enrollment in Ineligible Program;
4. Title IV disbursements to student by Title IV Program;
5. Date and Amount of Returns already paid to the Title IV programs or lenders; and
6. Difference between Title IV disbursements and returns.

Strayer University must summarize the total amount of ineligible Title IV funds disbursed that remain to be paid by program and award year.

The Title IV aid disbursed to students who were enrolled in the ineligible program constitutes an institutional liability. Strayer University is responsible for repayment of Title IV funds disbursed to students who were enrolled in the Associate in Arts in General Studies program during the time period noted above.

Finding # 2: Excess Cash Maintained

Citation: Excess cash is considered to be any amount of Title IV program funds that an institution does not disburse to students or parents by the end of the third business day following the date the institution received those funds from the Secretary. *34 CFR § 668.166.* The cash management regulations state that an institution has disbursed Title IV funds on the date that the institution credits a student's account at the institution. *34 CFR § 668.164.* In addition, funds received by an institution under the Title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate those funds for any other purpose. *34 CFR § 668.16 (b).*

The Department may require a school that maintains excess cash in its accounts to reimburse the Secretary for the costs incurred in making those funds available to the institution. *34 CFR § 668.166 (c)(1)(i).* This liability is determined to be equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. *34 CFR § 668.166 (c)(2)(ii).*

Noncompliance: Strayer University failed to disburse all Title IV, HEA funds drawn through the G5 System within the required three-day timeframe.

The program review team examined twenty-four drawdowns from the G5 System reports for the two award years under review. The team selected drawdowns from Federal Pell Grant (Pell) Program, the Supplemental Educational Opportunity Grant (SEOG) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program.

For each drawdown, the review team traced selected disbursements to the individual student account records. Of the twenty-four drawdowns examined, violations of Title IV disbursement requirements were identified in six drawdowns. The chart below details the results of the six drawdowns in violation of the three-day requirement.

Title IV Program	Amount of the Drawdown	Transaction Date +3 Business Days	Amount of Disbursements Not Posted within 3 Business Days	Date Funds Posted to Student Account Record	Date Funds Returned to G5	# Days Funds Held by Institution
Pell	$66,723.00	01/21/09	$8,717.00	02/09/09		19
Pell	$22,245.27	03/18/09	$11,242.00	03/23/09		5
Pell	$116,524.00	05/20/09	$2,366.00	05/22/09		2
Pell	$11,081,895.00	07/23/10	$1,337.00	08/03/10		11
Direct Loan	$5,057,749.00	07/21/09	$608,855.00 $873,871.00		07/24/09 08/14/09	3 24
Direct Loan	$21,613,205.00	07/15/10	$43,454.00		07/28/10	13

An institution's failure to disburse Title IV funds to students in a timely manner results in increased expense for the U.S. Department of Education and undue financial harm to the student.

Required Action: Strayer University must review its policies and procedures in order to ensure that all Title IV funds received by the institution are promptly disbursed to the intended student within the required timeframe. The institution must submit a copy of any policy changes with its response to this program review report.

Finding # 3: Title IV Funds Not Disbursed Timely During Payment Period

Citation: Federal regulations state that a student is eligible to receive Title IV, HEA program assistance if the student meets all of the eligibility criteria. A participating school is required to make these eligibility determinations. If all eligibility requirements are met, the institution should pay any student who is eligible and make payments for all eligible periods of enrollment. *34 CFR § 668.32.*

The Cash Management Regulations specify that a school must disburse all FSA grant and loan funds on a payment period basis. Furthermore, the regulations require an institution to disburse Title IV funds at least once each payment period. *34 CFR § 668.164(b).*

Within a payment period, institutions are required to time the disbursement of Federal Pell Grant funds to best meet the needs of students at the school. *34 CFR § 690.76(a).*

Noncompliance: Strayer University did not disburse Title IV funds timely to students each payment period. The review team found that several of the Pell Grant drawdowns selected for review included disbursements to students' accounts for prior payment periods within the award year.

For example, the 2008-2009 Federal Pell Grant drawdown of $85,854.00 on August 31, 2009 included Title IV funds disbursed to the following payment periods:

Term	Payment Period	Title IV Funds Disbursed
Summer '08	06/30/2008 – 09/15/2008	$8,933.00
Fall '08	10/06/2008 – 12/22/2008	$19,685.00
Winter '09	01/12/2009 – 03/30/2009	$20,966.00
Spring '09	04/13/2009 – 06/29/2009	$36,270.00

School officials indicated that this drawdown was completed after a year-end reconciliation process which identified students who were eligible for the Pell Grant funds during the award year, but who had not been awarded those funds. After confirming the students' eligibility, the institution stated that the funds were credited to the students' accounts as quickly as possible in order to avoid a Federal Pell Grant under award situation.

The review team noted that many of the disbursements credited to the students' account created a credit balance in the prior payment period. The institution promptly paid the credit balance to the student. Consequently, these untimely disbursements resulted in Title IV funds not being available to help students meet their financial responsibilities during the payment period.

An institution's failure to disburse Title IV funds timely to students results in increased expense for the U.S. Department of Education and undue financial harm to the student.

Required Action: Strayer University must maintain a cash management system to comply with the disbursement requirements and federal regulations. Additionally, Strayer University must develop procedures to disburse Title IV funds on a timely basis each payment period to help students meet their financial needs during that period.

Appendix A: Student Sample

2008-2009

Name **Social Security Number**

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2009-2010

(b)(6); (b)(7(C)

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Final Program Review Determination
PRCN #: 201040327290

Appendix B

Strayer University's Response
May 16, 2011

2303 Dulles Station Boulevard
Herndon, VA 20171

telephone 703.247.2500
facsimile 571.643.0629

STRAYER.
UNIVERSITY

May 16, 2011

BY EXPRESS DELIVERY

Diane Sarsfield
U.S. Department of Education
Federal Student Aid, School Participation Team – Philadelphia
100 Penn Square East, Suite 511
Philadelphia, PA 19107

RE: Program Review Report
OPE ID 00145900
PRCN 201040327290

Dear Ms. Sarsfield:

On behalf of Strayer University ("Strayer" or "University"), I write in response to the Program Review Report ("Report"), issued on March 25, 2011. Strayer respectfully submits that the U.S. Department of Education ("Department") erred in finding the Associate in Arts in General Studies ("AAGS") ineligible for Title IV aid.[1] Strayer offered the program for more than 30 years, from 1980 to 2011, and the Department approved the program repeatedly and without exception over those decades. Notwithstanding our view that the AAGS program was eligible, we have discontinued new enrollment in the program, stopped disbursements of Title IV funds to the program, and offered free tuition for those students near completion who want to finish their degree.

Strayer respectfully submits that its AAGS program met all regulatory requirements, including the requirement that it prepare students for gainful employment in a recognized occupation. We respectfully request that the Department reconsider the draft finding in the Report in light of this submission. We further request that the Department hold in abeyance the file review required by the Report, the purpose of which is to identify Title IV funds disbursed to

[1] We address under separate cover the Department's other preliminary findings that Strayer maintained excess cash and that Title IV funds were not disbursed timely during the payment period. Strayer agrees with the Department with respect to four out of the seven instances of excess cash and has implemented procedures to prevent future occurrences. We are providing explanation showing that the remaining three disbursements fall within the excess cash tolerances provided at 34 C.F.R. § 668.166(b). We also explain separately that, with respect to timely disbursements, Strayer made the disbursements as part of a self-identified correction and in a majority of cases they were made to supplement an original Title IV disbursement within the award year. In all cases, the University believes that the disbursements were made in accordance with applicable regulations and the University respectfully disagrees with the Department's preliminary finding and requests that this finding be removed from the Department's preliminary report.

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STRAYER UNIVERSITY

AAGS students since July 1, 2006, until we have had the chance to address the antecedent question of the program's eligibility.

Summary

We are at somewhat of a disadvantage in formulating this response because the Report did not cite any basis for its preliminary determination that the AAGS program was ineligible but merely restated the regulatory language. We respectfully submit that, in not providing a reasoned basis for its preliminary finding, the Department has failed to consider that the AAGS program curriculum taught students the skills associated with entry-level business careers, and indeed consistent with Strayer's mission was developed to provide students with these skills.

Most important, the Department should consider the more than thirty-year history of this program. During that time, countless students have achieved the intended goal of the program. Unsurprisingly, over that time the Department has approved and re-approved the AAGS program without exception, including as recently as January 2007 when the Secretary of Education ("Secretary") signed Strayer's most recent Program Participation Agreement ("PPA"). Furthermore, as part of Strayer's 1989 institutional eligibility application, Strayer submitted to the Department for review its complete course catalogue that contained the AAGS program description. Thus, the Department has had actual knowledge of the program since at least that time. In certifying and re-certifying Strayer, the Secretary has repeatedly determined that the AAGS program was an eligible program. In fact, in the last thirty years, the Report was the first indication Strayer has received that the AAGS program might be ineligible.

As the PPA is a valid and binding contract, the Secretary's statement of eligibility is enforceable against the Department. Strayer properly relied on the PPA and, as a result, believed it was in compliance with the Department's own regulations. Thus, even if the Department determines that the program was ineligible, Strayer respectfully requests that, in light of the absence of any fraud or misrepresentation in this case, the Department should forego imposing retroactive liability on Strayer. This is consistent with past Department practice and administrative law decisions on point.

The Department should not impose retroactive liability for the additional reason that Strayer has voluntarily discontinued the AAGS program, in deference to the Department's views. Although Strayer strongly believes that the AAGS program was an eligible program, as part of our culture of regulatory compliance and in deference to the Department's preliminary finding, Strayer has ceased disbursing Title IV aid to students in the AAGS program as of the Spring quarter. Students were permitted to transfer into another program of their choosing. In addition, if any credits did not transfer and students were required to take more than the 90 credits to fulfill the requirements of the new program, we waived their tuition, fees, and book charges for any additional credits required under their new program of choice. For students who only had four

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STRAYER. UNIVERSITY

courses left before completing their AAGS degree, Strayer has waived all tuition and book charges so as to allow them to continue in the program and finish their degree, but we have informed students that they are not currently eligible for government financial assistance. A majority of continuing AAGS students have chosen to transfer to the Associate in Arts in Business Administration program.

In sum, Strayer respectfully submits that its former AAGS program met all regulatory requirements, including the requirement that it prepare students for gainful employment in a recognized occupation. We request that the Department revise its preliminary finding of eligibility to state that the AAGS program is eligible for Title IV funding. We further request that the Department hold in abeyance the file review required by the Report, the purpose of which is to identify Title IV funds disbursed to AAGS students since July 1, 2006, until we have had the chance to address the antecedent question of the program's eligibility.

I. Strayer's Associate in Arts in General Studies Was an Eligible Program.

Strayer is, and always has been, a business school. Indeed, the University was first established as "Strayer Business College" in 1892. Strayer's mission is to provide high quality education that enables working adult students to succeed in their careers and their communities. Our mission has been the same for more than a century. Like all Strayer programs, the AAGS remains true to the words that our founder Irving Strayer included in the 1912 Student Catalogue: "The courses have been designed and presented to meet the needs of the business office today." *See* Exhibit A. The AAGS program allows students more flexibility in selecting courses than some other program, but it still requires students to take basic business classes that prepare them for specific occupations.

The Department should neither view the program in a vacuum nor take the program's form (*i.e.* its name) over its substance (*i.e.* its academic content) when examining eligibility. The AAGS program prepares students for gainful employment in entry-level business careers, as the core components of the degree make clear.

Students in the AAGS program must complete a total of ninety credit hours to graduate, consisting of twenty classes (all Strayer courses are 4.5 credits each). Of these twenty classes, students must complete the Core Component of the degree, consisting of five mandatory classes, or 22.5 credits, in Accounting 100, Introduction to Business 100, Introduction to Information Systems 105, English Composition 115, and Mathematics 105. These required core classes set Strayer's AAGS program apart from general studies degrees offered by other institutions which do not require specific business-oriented classes, but rather permit students to select courses à la carte from a wide array of different subject areas.

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As elaborated below, the AAGS program prepares students for a number of positions with similar business attributes listed in the U.S. Department of Labor's *Dictionary of Occupational Titles* ("Dictionary"), in full compliance with Department regulations. In addition, Strayer's courses equip students with actual job skills, and thus are very different from the general life enrichment programs that the Department previously has found to be ineligible at other institutions. Given that the program has remained substantively the same for more than thirty years, during which time the Department never questioned its eligibility, we see no reason for the change in treatment. We draw specific attention to the Department's recertification and entry into PPAs with Strayer during the relevant time specifically referenced in the Report, July 2006 to the present. Neither the PPAs nor the eligibility notice letters excluded the AAGS program from eligibility, and there is no justification for departing from those conclusions now. Finally, in the absence of any fraud or misrepresentations, it would be inconsistent with the Department's past practice to demand repayment of Title IV funds that were disbursed many years ago.

A. The AAGS Program Prepares Students for a Number of Positions Listed in the *Dictionary of Occupational Titles*, in Compliance with Department Regulations.

The Department's Report indicated that Strayer's AAGS program does not meet the Title IV definition of an eligible program, and that the University therefore disbursed Title IV funds to students enrolled in an ineligible program. As explained in the attached September 9, 2010, memorandum (which this submission supplements), the AAGS program prepares students for gainful employment in recognized occupations, and thus is eligible to receive Title IV funds. *See* Exhibit B.

In crafting the AAGS program to prepare students to compete in the modern workforce, Strayer properly relied on Department regulations that specify the requirements for program eligibility. In particular, Strayer has relied on the regulatory text defining a "recognized occupation" as one that is either: (1) listed in an "occupational division" of the latest edition of the Dictionary, published by the U.S. Department of Labor; or (2) determined by the Secretary, in consultation with the Secretary of Labor, to be a recognized occupation.[2]

The Dictionary lists hundreds of occupational divisions and thousands of jobs, and is the only source referenced in the applicable regulations for institutions to determine compliance with the gainful employment requirement. Absent the Dictionary, there is no way for institutions to affirmatively establish that a program prepares students for gainful employment in a "recognized occupation" as that term is defined in 34 C.F.R. § 600.2. As such, the listings in the Dictionary are conclusive indicators of compliance with the gainful employment provision.

[2] 34 C.F.R. § 600.2.

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The AAGS program was designed specifically to teach the skills required for a number of such listings with similar business attributes, including, but not limited to, occupations in the following divisions: bookkeeping (210), personnel administration (166), and cashiers and tellers (211). As one example, the division of bookkeeper (21) leads to thirteen occupational codes, including bookkeeper (210.382-014). The job duties of a bookkeeper include: "Keeps records of financial transactions for establishment, using calculator and computer"; "[v]erifies, allocates, and posts details of business transactions to subsidiary accounts in journal or computer files from documents"; "[r]econciles and balances accounts."[3] Further, the Dictionary links to the O*NET website through a crosswalk for "Bookkeepers and Accounting Clerks," which indicates that the occupation requires knowledge of economic and accounting principles and practices, banking, English, math, computers and business operations.[4] As previously stated, the core classes required of AAGS students – accounting, introduction to business, introduction to information systems, English and mathematics – make clear that the program prepares students for gainful employment in such an occupation. That students can also apply the skills learned in the program to other occupations with similar job functions simply enhances the value the degree.

Strayer's AAGS graduate survey data from 2009 and 2010 further support that the AAGS program prepares students for gainful employment in a recognized occupation. Eighty-four percent of responding AAGS program graduates indicated that their education had a positive impact on their professional/career goals, with 48% of graduates indicating that the impact was significant. The vast majority of Strayer students are already employed when matriculating at Strayer, yet the value added of an AAGS degree is amply demonstrated by the 57.1% of respondents who indicated that the AAGS program did "very well" in preparing them for a new job, and the additional 28.6% responded that it prepared them for a new job "well." In addition, 34.4% of responding AAGS graduates indicated that the degree advanced their careers, with 17.2% responding that the degree assisted in being promoted to a higher position.

Furthermore, it should be noted that Strayer partners with a number of leading corporations which offer tuition assistance to their employees who attend Strayer. Hundreds of Strayer students employed by these companies which subsidize tuition have enrolled in the AAGS program, including students employed by Capital One, Verizon Wireless, Wachovia Corporation, and Wells Fargo & Company. These partnerships benefit workers looking to advance their knowledge base, future earnings, and employment opportunities, but they also benefit the corporations in the form of a more knowledgeable and skillful workforce. The fact that these companies regard the AAGS program as a useful course of study for their employees is powerful evidence that the AAGS program prepares students for gainful employment. Strayer crafted the curriculum of the AAGS program to provide students with the skills they need to succeed in today's workplace – *e.g.*, knowledge of economics, mathematics, accounting, and

[3] *Available at* http://www.occupationalinfo.org/21/210382014.html (last visited May 13, 2011).
[4] *Available at* http://www.occupationalinfo.org/onet/55338a.html (last visited May 13, 2011).

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other indispensible business skills. In this respect, the AAGS program is clearly distinguishable from cultural programs that the Department has found ineligible for Title IV funding. For example, in *In re Beth Medrash Eeyun Hatalmud* ("BMEH"), the hearing official found that the program at issue was ineligible because it was only designed to provide general personal enrichment.[5] As support for that proposition, the hearing official emphasized that BMEH's own statements in catalogues and reports to accrediting agencies, as well as the background of students, indicated that it did not have as its primary purpose the preparation for gainful employment, but rather the programs at BMEH "train its students to become scholars with in depth knowledge of classical Jewish texts and religious traditions."[6]

In contrast, the AAGS program was designed to provide core business competencies, not to prepare a person for cultural assimilation. Each report that Strayer has provided to its accrediting agencies, not to mention to the Department through the various recertifications and Program Reviews, has always described the AAGS program as one that prepares students for gainful employment. Furthermore, unlike BMEH, which did not offer job referral services and was "not concerned with job entry skills,"[7] Strayer provides career management resources to its students, both on campus and online, and the course catalogues detail the job entry skills taught.

The distinction between the AAGS program and the program found ineligible in BMEH is also evident in a subsequent Office of Hearings and Appeals case. In *In re Beth Jacob Hebrew Teachers College* ("Beth Jacob"), the hearing official was asked to consider two programs offered at the same school, and concluded that although Beth Jacob's Jewish Culture program was ineligible, its teaching program was eligible.[8] The hearing official pointed to the fact that students who graduated from the teaching program had become teachers, and that the opinion of witnesses was that the program prepared them for such an occupation.[9] Further, the hearing official found that Beth Jacob's certificate was recognized for licensure by a national organization of Orthodox Jewish schools, and that it had a good rate of graduate hiring in the Jewish education community.[10]

Strayer's AAGS program is more akin to Beth Jacob's teaching program, which was found eligible, than the various religious programs found to be ineligible. Unlike the ineligible programs, the courses offered under the AAGS program – economics, mathematics, accounting – are very different from classes that teach basic life skills. The AAGS program is geared towards providing students with the skill set necessary to enter the workforce, rather than providing a background on culture and history. Further, unlike Beth Jacob's refusal, or perhaps inability, to

[5] *In re Beth Medrash Eeyun Hatalmud,* Dkt. No. 94-45-ST (Apr. 23, 1996).
[6] *Id.* at 3.
[7] *Beth Medrash Eeyun Hatalmud v. Riley*, 1998 U.S. Dist. LEXIS 4327, *9 (S.D.N.Y. Apr. 3, 1998).
[8] *In re Beth Jacob Hebrew Teachers Coll.*, Dkt. No. 94-10-EA (Mar. 25, 1994).
[9] *Id.* at 2.
[10] *Id.*

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provide reference codes to an occupational outlook handbook from the Dictionary, Strayer is able to point to the specific occupations for which the AAGS program prepares students, such as those dealing with bookkeeping, personnel administration, and cashier/teller work. These are all listed in the Dictionary as required by the Title IV, Higher Education Act of 1965, as amended ("HEA") regulations.

B. The Department Approved the AAGS Program as Part of Strayer University's 1989 Institutional Eligibility Certification and 2006 Application for Recertification, and Agreed to its Eligibility in the 2007 Program Participation Agreement, Which Is Still in Effect.

Strayer offered the AAGS program for more than thirty years, and the Department considered the program in the University's 2006 recertification application. According to the earliest historical records available, the AAGS program was created at Strayer in 1980. By letter dated January 14, 1981, the D.C. Educational Institution Licensure Commission indicated it was reissuing Strayer a license to confer the Associate in Arts degree for majors in a number of different areas, including General Studies. *See* Exhibit C. The letter stated that the Commission's decision was made on December 4, 1980. *Id.* In 1981, shortly after Strayer developed and introduced the AAGS program, Strayer underwent a Department recertification of eligibility. As part of that process, Strayer would have submitted proof of accreditation and licensure, as well as a course catalogue listing its various programs. As such, the Department's review would necessarily have included a review of the letter from the D.C. government of January 14, 1981, clearly indicating the existence of and licensure of the AAGS program, as well as Strayer's 1980-81 course catalogue which listed the AAGS program and provided a description thereof. In addition, the Department has considered, and affirmatively determined, Strayer's eligibility to continue under the Title IV, HEA program through multiple recertifications (including in 1983, 1987, 1989, 1997, 2001, 2004 and 2006). In fact, as part of Strayer's 1989 institutional eligibility application, the Department required Strayer to submit a complete course catalogue that contained the AAGS program description. The institutional eligibility application also directed Strayer to specify the pages on which its degree programs were listed. This, of course, is in addition to information collected on the AAGS program through Department program reviews (most recently in 1999 and 2008), and review of Strayer's annual Title IV audits. During that time, the AAGS program remained in existence and information about the program was provided to and examined by the Department. The Department has never, during this continuous and systematic oversight, questioned the eligibility of the AAGS program.

Strayer's recertification application to the Department on September 28, 2006, and its follow-up submission on Oct. 20, 2006, which formed the basis of its current PPA, were filed in accordance with the Department's procedures. *See* Exhibits D and E. That application included, as attachments, licenses from all of the state educational licensing authorities with oversight over

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Strayer's campus locations. The AAGS program is listed as an approved program on the licenses of ten state agencies – Alabama (two agencies), Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, and South Carolina.[11] Overall, the documents submitted in relation to recertification referred to the AAGS in at least 17 places.

For example, the Alabama license clearly indicated that "[t]he following courses are approved for the above named school" and listed the AAGS program fifth on the list. *See* Exhibit D, Tab 3. Similarly, the Department of Education of the Commonwealth of Pennsylvania license provides that "the following are now given final approval for offering in Pennsylvania" and lists the AAGS thereunder. *See* Exhibit D, Tab 12. Thus, Strayer provided to the Department documentation that sufficiently informs the Department of Strayer's programs in general and of the AAGS specifically.

Strayer's most recent PPA extended eligibility to all degree programs included in the application, including the AAGS program. The Department's regulations provide that, during the recertification process, the Secretary is to review the application and make an eligibility determination:

> (1) If the Secretary determines that an applicant institution satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution to be an eligible institution as of the date—
> (i) The Secretary signs the institution's program participation agreement described in 34 C.F.R. part 668, subpart B, for purposes of participating in any title IV, HEA program; and
> (ii) The Secretary receives all the information necessary to make that determination for purposes other than participating in any title IV, HEA program.[12]

As to the extent of eligibility, the regulations provide that "[i]f the Secretary determines that the entire applicant institution, *including all its locations and all its educational programs*, satisfies the applicable requirements of this part, *the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility*."[13] Conversely, if the "Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements," the Secretary can extend eligibility only to those programs and locations that meet those requirements.[14]

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[11] Tennessee and Virginia do not list any specific programs.
[12] 34 C.F.R. § 600.10(a).
[13] 34 C.F.R. § 600.10(b)(1)(emphasis added).
[14] 34 C.F.R. § 600.10(b)(2).

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Strayer's PPA, signed by the Secretary on January 11, 2007, clearly states that the Agreement applies to the entire institution and there are no limits on the educational programs that are approved. *See* Exhibit F. It provides that the University and the Department "agree that the Institution may participate in those student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs) indicated under this Agreement and further agrees that such participation is subject to the terms and conditions set forth in this Agreement." Under "Scope of Coverage," there is no limiting language whatsoever: "This Agreement applies to all locations of the Institution as stated on the most current ELIGIBILITY AND CERTIFICATION APPROVAL REPORT issued by the Department."[15] Furthermore, the terms and conditions set forth in the agreement do not contain an exclusion clause for any program offered by Strayer, let alone the AAGS.[16]

The regulations require the Secretary to make a determination on the eligibility of programs in existence at the time that a school applies for an institutional eligibility determination [17] The eligibility notice provided to Strayer on January 11, 2007 extended eligibility to the entire University and all of its degree programs. *See* Exhibit G. The eligibility notice made clear that the decision on eligibility was "based upon the information included in your Application for Approval to Participate in Federal Student Financial Aid Programs" that, as previously indicated, included numerous references to the AAGS program. Strayer, therefore, is in full compliance with its PPA given that "the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility."[18]

That programs in existence at the time of certification either receive approval from the Department, or the Department must explicitly deny eligibility, is supported by the regulations' mechanism for receiving approval for programs instituted after an eligibility determination. In short, Department regulations specify that, if a school launches a new program without first applying to the Department for approval, the school is liable in the event the Department later finds the program to be ineligible. The clear implication is that, if a school *does* submit a program to the Department for approval, then the school is *not* liable. This is exactly what Strayer did for the AAGS program when it submitted its application for recertification. In other

[15] Capitalization in original.
[16] Prior to the PPA currently in effect, Strayer received a Provisional PPA on January 30, 2004, that remained in place until the new PPA was signed on January 7, 2007. The 2004 PPA was entered into after Strayer submitted information to the Department regarding a change in control, and remained provisional because of that change in control. The application was submitted on September 26, 2003, and the document submission included licenses and certifications from the states in which Strayer then operated, with no fewer than ten references to the AAGS an approved program within the particular state. Like the current PPA, nothing in the Provisional 2004 PPA or the eligibility letter limited the eligibility of the AAGS, despite the fact that it was clearly before the Department in its consideration of recertification.
[17] *In re Patten Coll.*, Dkt. No. 94-122-SP (Aug. 15, 1995) (determination on institutional eligibility "is made, in part, by determining the eligibility of the different educational programs offered at the institution").
[18] 34 C.F.R. § 600.10(b)(1).

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words, Department regulations establish a "safe harbor," that protects Strayer from a finding of noncompliance.

As the Department has recognized, a PPA is a binding contract between an institution and the Department.[19] As such, the same contractual obligations that arise from private contracts arise from PPAs, and Strayer had every right to assume that the grant of eligibility included the AAGS program. As one federal appellate court held in relation to a formal written PPA, "[a]lthough it may well be . . . that most (and perhaps all) of these contractual provisions were required by and incorporated the governing regulations, that does not make them any less contractual obligations or provisions, or constitute a valid reason for not treating them as such."[20]

The Department's decision that the AAGS program is ineligible is contrary to the terms of the contract because the contract itself, pursuant to the Department's own regulations, extended "eligibility to all educational programs and locations identified on the institution's application for eligibility."[21] Even if the Department decided to exclude the AAGS program from eligibility in its next PPA,[22] it does not follow that the Department can retroactively exclude from eligibility a program that was necessarily considered and passed upon by the Department in 2006-2007 (as well as before that time in recertifications since 1981).

II. There Is No Basis for the Department to Impose Retroactive Liability.

As explained above, Strayer believes that the AAGS program is now, and always has been, an eligible program and, in addition, that it has a valid and enforceable contract with the Department that extended eligibility to the AAGS program. If the Department determines for the first time in more than thirty years that this is not the case, we respectfully submit that it would be inconsistent with past practice to impose retroactive liability. Since establishing the AAGS program, Strayer consistently has sought to operate the program in good faith and in accordance with the applicable statutory and regulatory standards. The Department may now believe that Strayer has misunderstood those standards. Yet in the past, the Department has not imposed retroactive liability in similar situations where the institution did not engage in fraud or misrepresentation. Strayer disbursed Title IV funds consistent with what it believed, based on the regulations, its PPA allowed.

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[19] *See, e.g., In re Wrightco Techs. Technical Training Inst.*, Dkt. No. 05-01-SP (Aug. 16, 2005); *In re Phillips Colls., Inc.*, Dkt. No. 92-64-SA (July 13, 1995); *In re Jon Louis Schs. of Beauty*, Dkt. No. 00-38-SP (Nov. 21, 2000).
[20] *San Juan City College v. United States*, 391 F.3d 1357, 1360 (Fed. Cir. 2004) (holding that if the Department breached the PPA, the college could seek damages).
[21] 34 C.F.R. § 600.10(b)(1).
[22] It should again be noted that we have discontinued enrollment in the program.

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The Department's own regulations support the contention that liability on eligibility should not apply retroactively absent misinformation. In relation to loss of eligibility, 34 C.F.R. § 600.40(c)(1) provides as follows:

> If the Secretary designates an institution or any of its educational programs or locations as eligible *on the basis of inaccurate information or documentation*, the Secretary's designation is void from the date the Secretary made the designation, and the institution or program or location, as applicable, never qualified as eligible.[23]

There is nothing, however, suggesting that a program can be found ineligible retroactively absent inaccurate information or documentation. Here, the Department has not suggested, and cannot argue, that Strayer submitted inaccurate information or documentation. Therefore there is no basis for the position that the AAGS was not eligible at the time that Strayer disbursed Title IV funds to students enrolled in that program.

Furthermore, the Department often has forborne from demanding the return of Title IV funds that an institution expended before it was notified that the program in question was ineligible. For instance, in 1999, the Department informed the University of Phoenix ("UOP") that its Associate of Arts in General Studies program was not eligible to receive Title IV funds.[24] At the time, the Federal Student Aid office clearly indicated that liability would only be prospective – *i.e.*, that the school would be liable only to the extent that it continued to disburse funds to students in the program. In particular, a letter dated February 26, 1999, explained that "[a]ny disbursements of Title IV student financial assistance funds made after February 25, 1999 will be considered liabilities."[25] This result is particularly apt here, because like UOP in 1999, Strayer was unaware that the AAGS program was potentially ineligible. Despite this warning, the University of Phoenix continued to disburse Title IV funds to students enrolled in the ineligible program. In 2005, the Department's Inspector General therefore issued a Final Audit Report directing the institution to repay the funds it had disbursed after being put on notice six years earlier. The Department did not, however, impose on the UOP any liability for funds that were distributed to students in the ineligible program before the school was told that the program was ineligible. We request that if the AAGS program is found ineligible, the Department follow the same approach here: Strayer should be liable only to the extent that it continues to disburse

[23] Emphasis added.

[24] Strayer has no reason to believe that the Phoenix AAGS program as it existed in the 1990s was similar to Strayer's AAGS program. Strayer's AAGS program, unlike other general studies programs, contains required core courses and is intended to prepare students for entry level business careers.

[25] U.S. Department of Education Office of Inspector General, Final Audit Report at 8-9, Control No. ED-OIG/A09E0015 (Aug. 24, 2005).

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Title IV funds to students enrolled in the AAGS program, and not for any funds expended in the distant past.[26]

Such an approach would be entirely consistent with previous decisions in which Department officials held that the imposition of retroactive liability on an institution is inappropriate in the absence of fraud or misrepresentation. For instance, in *In re Academy for Jewish Education* ("AJE"), the Department initially sought to recover all Title IV funds AJE disbursed, totaling $14,439,593, after the Department determined that the school did not meet the statutory requirements for certification. The hearing official rejected this demand for retroactive repayment, explaining that between 1987 (when AJE was first found eligible) and 1995, the Department "had ample opportunity to be familiar, and should have been fully familiar, with AJE's programs."[27] The hearing official drew attention to the fact that the Department would have "conducted and reviewed a number of program audits and received other program reports and had access to the AJE course catalogs, etc., and was fully aware of AJE's programs."[28] As such, the hearing official found that "[t]o now go back and seek reimbursement for the millions of Title IV dollars disbursed by AJE in reliance of SFAP's 1987 eligibility determination would be grossly unfair and an abuse of discretion."[29] Although the hearing official acknowledged other cases in which the Department had retroactively imposed financial liability,[30] he distinguished AJE's case because the Department did not allege that agency officials had made any mistake or that the school had ignored any statutory requirement.

The same can be said of Strayer. The Department does not suggest that the agency officials who participated in the AAGS program's recertification and the program reviews over the past three decades were somehow mistaken. Rather, the Department has now determined for the first time that the program does not meet the statutory requirement of preparing students for gainful employment in a recognized occupation. Just as with AJE, the Department conducted eligibility determinations and reviewed Strayer's program on numerous occasions, had access to Strayer's catalogues and public disclosures of the program, and was fully aware of the AAGS program. Strayer reasonably relied on those reviews and recertifications. To go back now and impose retroactive liability would be as inequitable to Strayer as it would have been to AJE.

Similarly, the Department's reluctance to require retroactive repayment was examined in *In re Beth Medrash Eeyun Hatalmud* ("BMEH").[31] In that case, the hearing official determined that it would be inappropriate to require the school to repay $15,949,148 after it was found, years

[26] Given the likely programmatic differences between the UOP and Strayer programs, the Department's actions against UOP cannot be said to have provided Strayer with notice that its AAGS program was ineligible.
[27] *Id.* at 2.
[28] *Id.* at 2-3.
[29] *Id.* at 3.
[30] *See, e.g., In re Academia La Danza Artes del Hogar*, 81 Ed. Law Rep. 1250 (1992).
[31] Dkt. No. 97-94-SP (June 16, 1998) (citing 34 C.F.R. § 600.40(c)(1)).

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later, to be an ineligible institution. The hearing official expressed doubt that the Department had legal authority to require retroactive repayment, noting that the regulations "do not speak specifically to the issue of retroactivity" (except in one instance, where the decision that a school is ineligible may be applied retroactively if it was designated as eligible "on the basis of inaccurate information or documentation").[32] As such, the hearing official determined that "absent any evidence of fraud or misleading information . . . it would be unfair and impermissible, and possibly a violation of substantive due process, to direct repayment on the amount in issue."[33] The Department has not alleged, and cannot allege, that Strayer perpetrated a fraud or somehow provided misleading information about the AAGS program. As in the *BMEH* matter, "the specific facts of this case do not warrant the imposition of financial liability."[34]

Likewise in *In re Beth Jacob*, the Secretary ultimately concluded that imposition of retroactive liability was unwarranted absent fraud or misrepresentation. Initially, the hearing official upheld the imposition of retroactive liability totaling more than $19 million after the Department determined that one of the school's programs was ineligible.[35] Upon review the Secretary remanded the case, directing the hearing official to provide further explanation of his decision to approve retroactivity, given the *AJE* case's conclusion that such liability was unwarranted.[36] On further review, the hearing official opined that "[i]t may be unreasonable and unfair . . . to demand the return of all Title IV funds spent by an institution under an eligibility determination erroneously made by the Department in this case."[37] The Secretary ultimately issued a decision finding that "[t]he specific facts of this case . . . do not warrant the imposition of financial liability[.]" In accordance with his discretionary authority, he reversed the finding of financial liability.[38]

The Department should reach the same outcome in this case. In the absence of any indication that Strayer was culpable in relying on the 2007 PPA approval of the AAGS program,

[32] *Id.*
[33] *Id.*
[34] Dkt. No. 97-94-SP, Decision of the Secretary (Apr. 1, 1999). Although the Secretary did not impose retroactive liability, he did, without discussion, impose a fine in the amount of $50,000 on the institution. The fine was ultimately vacated by the U.S. District Court which held that "Secretary Riley's single-sentence imposition of this $50,000 penalty provides not the slightest inkling that his decision could be or was supported by substantial evidence, was warranted by the facts, or that he has even attempted to comply with the applicable procedures. Indeed, it reads like a misnomer, affirming the decision to relieve BMEH of financial liability in the first clause, yet imposing a steep penalty in the second clause." *Beth Medrash Eeyun Hatalmud v. Riley*, 2005 U.S. Dist. LEXIS 32303, *7 (S.D.N.Y. Dec. 9, 2005).
[35] Dkt. No. 96-77-SP (Mar. 17, 1997).
[36] Dkt. No. 96-77-SP, Secretary's Remand Order (Mar. 2, 1998).
[37] Dkt. No. 96-77-SP (July 10, 1998).
[38] Dkt. No. 96-77-SP, Decision of the Secretary (Oct. 13, 1999).

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or previous approvals, or that approval was obtained because of some fraud on the part of Strayer, the facts of this case do not warrant the imposition of retroactive liability.[39]

* * *

For the foregoing reasons, Strayer respectively requests that the Department reconsider its first preliminary finding regarding the AAGS program. In the alternative, we request that the Department's determination be applied prospectively only.

Should you have any questions about this submission, please contact Mr. Cale Holman, Director, Student Finance Operations, Strayer University at (703) 713-3622 (office), (703) 880-7279 (fax) or cale.holman@strayer.edu. Thank you very much.

Sincerely,

(b)(6); (b)(7(C)

Dr. Sondra F. Stallard, Ph. D.
University President
Strayer University

[39] The legal doctrine of estoppel confirms that Strayer should not face retroactive liability. "While it is true estoppel is to be rarely invoked against the United States, there are circumstances where the Government should be required by our law to stand behind the written agreements of a high public official like [an agency head] in order to prevent manifest injustice." *Walsonavich v. United States*, 335 F.2d 96, 1010 (3d Cir. 1964) (citations omitted). See also *Portmann v. United States*, 674 F.2d 1155, 1167 (7th Cir. 1982). Here, it would be manifestly unjust to force Strayer to repay Title IV funds disbursed to students as long as five years ago, especially since the Secretary entered into a written contract with Strayer, the PPA, in which the Secretary agreed that AAGS program was eligible.

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STRAYER. UNIVERSITY

May 16, 2011

BY EXPRESS DELIVERY

Diane Sarsfield
U.S. Department of Education
Federal Student Aid, School Participation Team – Philadelphia
100 Penn Square East, Suite 511
Philadelphia, PA 19107

RE: Program Review Report
OPE ID 00145900
PRCN 201040327290

Dear Ms. Sarsfield:

Enclosed herein please find Strayer University's ("Strayer" or "University") responses to the U.S. Department of Education's ("Department") second and third preliminary findings in the Program Review Report ("Report") issued on March 25, 2011.[1]

I. Finding #2: Excess Cash Maintained

Strayer University understands the importance of disbursing or returning federal student aid funds within the required time frames set forth in the cash management regulations at 34 CFR § 668.166. The Department's preliminary report noted six drawdowns related to seven different excess cash amounts. As described below, we concur with the Department's findings as to four of the excess cash amounts, and we have implemented procedures to prevent similar occurrences in the future. However, we respectfully disagree with three excess cash findings, as our documentation shows these disbursements fall within the excess cash tolerances provided at 34 CFR § 668.166(b).

Pell posted on 02/09/09

Strayer University concurs with this finding. The excess cash amount of $8,717 resulted from Strayer's third party financial aid processor's (GFAS) transfer of funds to Strayer's bank account without also sending the University the associated disbursement files. The disbursement files are required to post funds to the students' University accounts. Upon receipt of the

[1] Strayer has, by separate letter, addressed the Report's first finding related to the Associate in Arts in General Studies program.

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disbursement files, the University disbursed funds to the student accounts, although after the required timeframe.

Strayer University has reviewed its policies and procedures in order to ensure that all Title IV funds received by the University are promptly disbursed within the required timeframes. Accordingly, the Strayer University Bursar's Office has since changed its disbursement policy to implement a daily reconciliation process to ensure all disbursement files are received when funds are transferred to the University's account. If a disbursement file is not received, the funds are returned within three business days. The University's revised disbursement procedure to ensure funds are posted within the required timeframe is attached as Exhibit A.

<u>Pell posted on 08/03/10 and Direct Loan funds returned on 07/28/10</u>

Strayer University concurs with this finding. The excess cash amounts of $1,377 for the $11,081,895 Pell drawdown and the $43,454 of the $21,613,205 Direct Loan drawdown resulted from an additional manual process that was required when the original disbursement records did not pass initial system eligibility checks. These files required additional research to determine if the students were properly eligible for funding, which occurred outside the three business day requirement.

Strayer University has reviewed its policies and procedures in order to ensure that all Title IV funds received by the University are promptly disbursed within the required timeframes. In February 2011, Strayer implemented a new reconciliation policy that will enable the University to identify any student funds that cannot be posted within the three business day requirement so that funds can be returned while the University confirms student eligibility. The revised reconciliation procedures are attached as Exhibit A hereto.

<u>Direct Loan funds returned on 08/14/09</u>

Strayer University concurs with this finding. In the past, Strayer University has drawn down funds for expected disbursements and then confirmed eligibility on a student-by-student basis. Previously, if a student was deemed ineligible for funds, the manual review process may have resulted in funds being returned in excess of the three business days rule due to the time involved with the manual review process.

Strayer University has reviewed its policies and procedures in order to ensure that all Title IV funds received by the University are promptly disbursed within the required timeframes. Starting in January 2011, Strayer University changed its procedure to draw down only those funds for which students have first been confirmed as being eligible to receive. This will enable the University to eliminate the standard manual review for all students scheduled to receive funds. A copy of the revised policy and procedure for first confirming eligibility and then posting funds is attached as Exhibit A.

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Pell posted 3/29/09, Pell posted 05/22/09, and Direct Loan return 07/24/09

Strayer University respectfully disagrees with these findings. Under the excess cash tolerances set forth in 34 CFR §668.166(b), an institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. Each of these amounts of excess cash fell well within the excess cash tolerance of 7 days under 34 CFR § 668.166(b).

Amount of Excess Cash	Transaction Date + 3 Business Days	Date Funds Posted to Student Account or Returned	Days Excess Cash Maintained
$11,242.00 (Pell)	03/18/09	03/23/09	5
$2,366.00 (Pell)	05/20/09	05/22/09	2
$608,855.00 (Direct Loan)	07/21/09	07/24/09	3

One percent of the total amount of funds that the University drew down in the 2008-2009 award year is $5.4 million. Strayer University understands the importance of disbursing or returning federal student aid funds within the three business day requirement. However, Department regulations permit excess cash for a limited time for limited amounts. Strayer University either disbursed funds to student accounts or returned it to the Department well within the timeframe allowed under the excess cash tolerances. For this reason, the University respectfully disagrees with the Department's preliminary finding.

II. Finding #3: Title IV Funds Not Disbursed Timely During Payment Period

Strayer University understands the importance of disbursing Federal funds within each payment period and agrees that 34 CFR § 668.164(b) requires that Title IV funds be disbursed at least once each payment period unless certain specific conditions are met.

Strayer University's standard policy is to disburse Title IV funds that students are eligible to receive, including Pell Grants, once during the term for which the student is enrolled. However, as part of its internal review process, the University identified a group of students that had received a lower Pell Grant than they were entitled to receive. In order to meet the University's policy to disburse all Title IV funds that students are eligible to receive, these under awards were corrected, and the University disbursed the balance of the Pell Grant funds owed to these students.

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While these disbursements to correct the original Pell disbursement were made outside the payment period, in the majority of cases the University did make at least one disbursement of Title IV funds to these students during the payment period, in compliance with 34 CFR § 668.164(b). These students received their eligible Title IV funds, minus their subsequent correction of Pell, during the payment period. Furthermore, 34 CFR § 690.76, which specifically deals with the payment of Pell Grants, allows an institution to pay funds in one lump sum for all prior payment periods for which the student was an eligible student within the award year, as long as the student's enrollment status is determined according to work already completed. Based on this provision, the University believes that the disbursements were in accordance with regulations, even for students who did not receive at least one Pell disbursement during the payment period, and respectfully disagrees with the Department's stated conclusion that a disbursement outside of the payment period resulted in increased expense for the Department and financial harm to the student.

The University believes that it could not best meet the needs of students and make payments for all eligible periods of enrollment as required by 34 CFR § 668.32 if the Department concludes the University is unable to correct underawards by making Pell disbursements based upon a prior payment period. Given that these disbursements were made as part of a self-identified correction and in most cases were made to supplement an original Title IV disbursement within the award year, the University respectfully disagrees with the Department's preliminary finding and requests that this finding be removed from the Department's preliminary report.

Sincerely,

(b)(6); (b)(7(C)

Dr. Sondra F. Stallard, Ph. D.
University President
Strayer University

Final Program Review Determination
PRCN #: 201040327290

Appendix C

Strayer University's Response
April 27, 2012

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STRAYER. UNIVERSITY

April 27, 2012

Denise Morelli
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Eligibility of Associate in Arts in General Studies

Dear Ms. Morelli:

On behalf of Strayer University ("Strayer" or "University"), I write in response to your March 2012 information requests in the course of your program review of Strayer's Associate of Arts in General Studies ("AAGS"). We appreciate the opportunity to provide additional information to assist you in your review of the eligibility of the AAGS program to receive Title IV funds:

1. Unfortunately, we are unable provide data on the occupational placement outcomes and post-AAGS academic coursework for the students who graduated from the AAGS program. Such data is unavailable and would be difficult to obtain from the hundreds of students who completed the AAGS program during the covered period. The Department itself acknowledged this difficulty when it issued the final program integrity regulations in June 2011 and explicitly declined to use data on employment rates and job placement as a metric for demonstrating program eligibility:

> We ...appreciate the suggestion to use ...employment rates [and] job placement rates...as alternative measures [for determining whether a program leads to gainful employment]. Some negotiators ...raised concerns about the ability of institutions to obtain valid placement information from graduates and employers...Based on the information we have available using them as a measure of whether a program leads to gainful employment would be premature.[1]

Our experience has borne out this concern about the lack of meaningful data in this regard. Strayer does not collect this data in the regular course of business. In preparation for compliance with the new Gainful Employment rule, we have attempted to obtain the data more broadly and have encountered significant difficulties in doing so. Data and information obtained from

[1] Gainful Employment: Debt Measures, 76 FED. REG. 34386, 34496 (June 13, 2011).

student surveys is conjectural at best, making obtaining and verifying information on graduates' occupational placement well-nigh impossible.

In any event, neither the statute and the implementing regulation, nor the relevant case law, suggests that occupational outcome is the relevant inquiry in determining whether the AAGS program "prepare[s] students for gainful employment in a recognized profession." While the Department's Office of Hearings and Appeals has considered occupational outcomes in conjunction with other factors in determining program eligibility, it has focused on the program's design, purpose, and curricular content in determining whether the program prepared students for gainful employment. In many instances, the placement of program graduates in occupations was not enough to salvage the program's eligibility to receive Title IV aid. The hearing official in *In re Bnai Arugath Habosem*, Docket No. 94-73-EA (June 16, 1994), explained the standard as such:

> [The institution must persuade the Department that] an intended purpose or aim of its program is consistent with the statutory requirement that the focus of its program is the preparation of its students for gainful employment in a recognized occupation. To meet this burden, it is not sufficient to simply show that gainful employment in a recognized occupation is potentially derived or incidentally available at the completion of the school's program; it must be shown that an institution's program builds toward a specific, employment oriented goal.

In re Bnai Arugath Habosem, Docket No. 94-73-EA, at *1 (June 16, 1994).

In that decision, the hearing official found that Bnai's Judaic Studies and Rabbinics certificate programs did not prepare students for gainful employment in a recognized occupation. *See id.* at *2. In doing so, the official distinguished Bnai's programs from teacher training programs held to be eligible programs:

I found that each of those institutions offered teachers training programs which were designed to prepare a student for gainful employment as a teacher and, therefore, were Title IV eligible programs. In each instance, the eligible program was clearly delineated by the institution as a teachers training program and, included in the curriculum, were standardized "education courses" which trained students how to teach. Here, those factors were not present.

Id.

2. In response to your inquiry and consistent with the above, we have taken steps to illustrate and verify the program's purpose and content. As we have indicated in prior communications with the Department on this matter, Strayer's former AAGS program had at its core a focus, consistent with Strayer's mission, of preparing students for the business workplace.[2] We thus retained the services of an educational consultant to illustrate the alignment

[2] That the AAGS program also imparted knowledge of the liberal arts does not mean that the program did not prepare students for gainful employment in a recognized occupation. During the 2008 reauthorization of the Higher Education Act, Pub. L. 110-315, Congress clarified its understanding that programs offered by proprietary higher

of the course work in the former AAGS program with the skills, knowledge, and duties required by certain discrete entry-level occupations recognized by the U.S. Department of Labor. This consultant undertook an exhaustive review of the AAGS course materials, including required reading and assignments, to link up the learning outcomes of the core classes in the program with the skills they are designed to impart. Please find enclosed his analysis.

In doing so, the consultant relied on the regulatory text defining a "recognized occupation" as one that is either: (1) listed in an "occupational division" of the latest edition of the *Dictionary of Occupational Titles*, published by the U.S. Department of Labor; or (2) determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation. 34 C.F.R. § 600.2.

The consultant examined the program overall and the courses involved in a typical AAGS student's plan of study. He found that the program enabled AAGS graduates to understand the basic environment within which contemporary businesses operate; to identify the primary functions (financial accounting, marketing, marketing, finance, and information systems, among others) that organizations have; leverage skills in financial accounting, information and office technology to improve office productivity; and have basic statistical, logical and analytical skills to solve simple analytical problems and be able to address problem solutions in a logical manner.

The consultant then matched these program outcomes to the Classification of Instructional Programs (CIP) codes developed by the Department's National Center for Educational Statistics (NCES) for accurate tracking, assessment, and reporting of programs of study.

Finally, the consultant utilized the Department's "crosswalk," which the Department provides matching CIP codes to Standard Occupational Classification (SOC) codes provided by the Department of Labor.[3] This crosswalk yielded 38 relevant occupational codes, and the consultant re-evaluated these codes in light of the AAGS program outcomes.[4] He found that the knowledge content required for these occupations matched the knowledge content provided by the AAGS program outcomes. The 38 relevant occupational codes are primarily entry level business support positions like procurement clerks, human resources assistants, postal service clerks, statistical assistants, insurance claims clerks, book-keeping accounting and auditing clerks etc. These occupations require good communication skills, problem solving skills, data analysis, documenting and recording information, critical thinking, social perceptiveness, and the use of office productivity software among other skills. The consultant also mentioned that the skills acquired in the AAGS program could prepare students for occupations outside of these 38.

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educational institutions may do both without impairing the eligibility of these programs to receive Title IV aid. *See* H. R. CONF. REP. 110-803 at 444 (July 30, 2008) ("The Conferees do not intend the terms 'gainful employment in a recognized occupation' and 'liberal arts' to be mutually exclusive").

[3] The SOC codes and their descriptions are available in O*net Online (www.onetonline.org). The Department of Labor's O*net website has very comprehensive descriptions regarding each occupation title, including tasks, knowledge, skills, abilities, work activities, work content, job zones, education, employment prospects, wages and other pieces of information.

[4] The consultant used the term "AAGS program outcomes" to describe the academic skills and knowledge taught in the AAGS coursework and learned by students.

We hope that the Department finds this additional information useful in the course of its review. We believe that, in light of the case law and the linkages between the course content and recognized occupations demonstrated by the independent consultant, the only reasonable conclusion is that the AAGS program be found eligible to receive Title IV funds.

Very truly yours,

(b)(6); (b)(7(C)

[redacted]

Brian W. Jones
Senior Vice President and General Counsel